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NOT TO BE PUBLISHED IN OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION FIVE

CHANDLER PROPERTIES,

Plaintiff and Respondent, **A143225**

v. **(San Francisco County Super. Ct. No. CCH14575873)**

JAMES JENKINS,

Defendant and Appellant.

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The trial court issued a workplace violence restraining order protecting two employees of Chandler Properties (Chandler) from James Jenkins. (Code Civ. Proc., § 527.8.)[1] Jenkins appeals, challenging the sufficiency of the evidence supporting the order. We reverse. We conclude the restraining order issued pursuant to section 527.8 must be reversed because there is insufficient evidence Jenkins made a credible threat of violence and Jenkins had a legitimate need for visiting Chandler's office.

[1] All further statutory references are to the Code of Civil Procedure. Section 527.8, subdivision (a) provides: "Any employer, whose employee has suffered unlawful violence or a credible threat of violence from any individual, that can reasonably be construed to be carried out or to have been carried out at the workplace, may seek a temporary restraining order and an order after hearing on behalf of the employee and . . . any number of other employees at the workplace . . . ."

FACTUAL AND PROCEDURAL BACKGROUND

Chandler manages numerous buildings in San Francisco. There is no security guard at its San Francisco office, which is open to the public. Jenkins owns and lives in a condominium in a building managed by Chandler.

Petition for Workplace Violence Restraining Order

In June 2014, Chandler filed a petition for workplace violence restraining order (form WV-100) (§ 527.8) requesting Jenkins stay 100 yards away from its office and two of its employees, Yumi Romero and Jenni Capuro. The petition alleged Jenkins — then 68 years old — made a credible threat of violence against Romero and Capuro, and Chandler had "an immediate concern" Jenkins would "continue his threatening, harassing, intimidating and scary behavior to [Chandler] employees" and cause them "to be in reasonable fear for their safety."

In identical supporting declarations, Romero and Capuro averred Jenkins came to the office on May 28, 2014, and was "extremely angry, threatening, rude, and frightening." Jenkins returned twice the next day; both times, he "was loud, abusive, cursing, and volatile." Romero and Capuro were "frightened" until Jenkins "angrily left." Over the previous "several weeks[,]" Jenkins visited the office five times, and was "always rude, loud and frightening." Romero and Capuro were afraid Jenkins would "become violent" when he visited the office. The court issued a temporary restraining order (form WV-110).

Jenkins opposed the petition. In his amended response, Jenkins explained his visits to the office.[2] The first visit, in 2013, was "in response to a note Chandler put on [his] door" about scheduling a time for a plumber to repair a leak. Jenkins went to Chandler's office to arrange the plumber visit because Chandler did not respond to his

[2] Jenkins filed an initial response in propria persona before hiring an attorney, who filed an amended response on his behalf. Jenkins's initial 10-page response is somewhat hyperbolic. For example, Jenkins explained he was "not interested in social interactions with girls, and violence is one form of social interaction. . . . I don't want to get involved with Yumi Romero or Jenni Capuro or any other girls in any kind of entanglement either violent or non-violent or anything else."

phone calls or letters. Jenkins met with a Chandler employee. "That visit went smoothly[.]" About a month later, Chandler left another note on Jenkins's door advising him there was still a leak in his condominium. Jenkins tried to schedule a time for a repair with the building security guard, but was unsuccessful so he went to the office to "set up the appointment." At the office, he scheduled the appointment with "no issues" and the "work was completed."

Jenkins returned to the office in April 2014 to speak to the property manager about noise coming from a neighbor's residence. Jenkins discussed the problem with the property manager, who agreed to "follow up." She did not tell Jenkins he "should deal" with the homeowner's association board (board) instead of the office. Several weeks passed and Jenkins did not hear from the property manager, so he returned to the office on May 28, 2014 with tape recordings of the noise. Jenkins spoke to the property manager, who told him she "didn't think there was that much she could do." She seemed sympathetic, however, and promised to try to locate a machine to play the tapes. That evening, Jenkins made additional tape recordings of the noise.

Jenkins returned to the office the next morning with the tapes because the property manager seemed sympathetic, and because he wanted to "keep the momentum going" to resolve the problem. Jenkins arrived at the office before it opened because he had other things "to take care of that day." Before the office opened, a man — presumably a Chandler employee — came out and asked Jenkins what he was doing and what he wanted. After Jenkins explained his purpose for being there, the man told him the property manager was not there and would return to the office that afternoon. Jenkins returned to the office that afternoon to speak with the property manager and give her the tapes. Jenkins spoke with two young women at the front desk who initially gave him the impression the property manager was in the office and would talk to him. Later, however, they started asking questions "and acted as if they were suspicious of [him]."

After one woman told Jenkins the property manager was not there, Jenkins became frustrated because he felt he was receiving "the runaround." The president of the board told Jenkins "there was nothing he could do" about the noise, so Jenkins "dropped

[his] complaint" regarding the noise. Jenkins did not talk to anyone at Chandler about the noise after May 29, 2014. He denied threatening or harassing anyone at the office and claimed his business at the office was legitimate because he paid Chandler to manage the condominium complex where he lives. He also denied making "a credible threat of violence[.]"

Hearing and Ruling

Romero testified Jenkins came to the office a couple of times, "angry, demanding to speak" with the property manager. When Romero told Jenkins the property manager was not available, he was "very angry. He wanted to speak to her." Romero was "scared" because Jenkins "was demanding and loud and wanted to speak to the property manager[,]" so she asked her boss to "deal with [Jenkins]." The property manager eventually came to the office; when she arrived, Jenkins "was calm."

The next morning, Jenkins was "in front of the office" when Romero arrived. Romero was "afraid" — she did not want to be in the office alone with Jenkins — so she went across the street and waited for another Chandler employee to arrive. Romero's boss arrived and told Jenkins "the property manager wasn't there . . . she was going to be back later on that afternoon." About an hour later, Jenkins returned to the office, but left quickly. He was "angry again" and, when he could not get the door open, he pushed the door because he was "so angry[.]" Romero and Capuro were "scared" because they were the only Chandler employees in the office.

Carolyn Chandler testified she had owned the business for 35 years and had never sought a restraining order. Two Chandler employees told Carolyn "very bad language was used and they were threatened and terrorized to be around" Jenkins.[3] Carolyn noted

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[3] We refer to Carolyn by her first name for clarity and convenience. Carolyn testified Jenkins "used horrible language and screaming." Counsel for Jenkins objected to "hearsay statements . . . with respect to what [Jenkins] supposedly stated" and urged the court to consider only Carolyn's personal interactions with Jenkins. The court stated it would consider Carolyn's statements regarding events she did not observe only for "her state of mind as an employer." Relevant hearsay evidence is admissible at a hearing on a workplace violence restraining order brought pursuant to section 527.8. (*Kaiser*

"other people [at the building] are terrorized by this man. And no one has been willing to do anything about it. And I'm fearful that he will come back and harm [Chandler] employees. . . . [¶] He has no reason to be in our office. He can handle all of his situations on the phone, either with us or with the board, or he has been invited to come out to the board. But he does not need to come in and terrorize [Chandler] employees, which is exactly what he did, and it's frightening." According to Carolyn, most people who live in the buildings Chandler manages do not come to the office. They call, e-mail, send a letter, or "communicate through their board of directors. [¶] We're not making the decisions. . . . The board is making the decisions. He can present [his issue] to the board. They asked him to. He has no reason to come to our office. . . . [¶] He does not have to physically come to our office, nor do many of our home owners and tenants."

Counsel for Jenkins argued there was no evidence of violence, nor evidence Jenkins made a credible threat of violence; according to counsel, Jenkins was merely "rude and loud." The court observed the "testimony that the two employees were in tears and fearful" was "circumstantial evidence" Jenkins's conduct was threatening and posed a credible threat of violence. Counsel for Jenkins also argued he went to the office for a legitimate purpose: to deal with the noise problem. On August 8, 2014, the court issued a one-year workplace violence restraining order (form WV-130) requiring Jenkins to stay 100 yards from Romero, Capuro and the office.

DISCUSSION

Jenkins contends insufficient evidence supports the workplace violence restraining order.[4] Section 527.8 "enables an employer to seek an injunction to prevent violence or

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Foundation Hospitals v. Wilson (2011) 201 Cal.App.4th 550, 557 (*Kaiser*); § 527.8, subd. (j) ["[a]t the hearing, the judge shall receive any testimony that is relevant"].)

[4] Chandler claims the appeal is moot because the restraining order was apparently set to expire in July 2015. We are not persuaded. The appeal is not moot because """there may be a recurrence of the controversy between the parties""" as Jenkins lives in a building Chandler manages and may need to visit the Chandler office in the future. (*Malatka v. Helm* (2010) 188 Cal.App.4th 1074, 1088; see also *In re Cassandra B.* (2004) 125 Cal.App.4th 199, 209 [appeal not moot despite expiration of restraining order].)

threatened violence against its employees." (*City of San Jose v. Garbett* (2010) 190 Cal.App.4th 526, 536 (*Garbett*).) To obtain an injunction pursuant to section 527.8, "'a plaintiff must establish by clear and convincing evidence not only that a defendant engaged in unlawful violence or made credible threats of violence, but also that great or irreparable harm would result to an employee if a prohibitory injunction were not issued due to the reasonable probability unlawful violence will occur in the future.' [Citation.]" (*Garbett, supra,* at pp. 537-538; *Scripps Health v. Marin* (1999) 72 Cal.App.4th 324, 335 (*Scripps Health*).)

We review the order issuing the injunction under section 527.8 for substantial evidence, resolving "all factual conflicts and questions of credibility in favor of the prevailing party, and draw[ing] all reasonable inferences in support of the trial court's findings. [Citation.]" (*Garbett, supra,* 190 Cal.App.4th at p. 538.) "'Substantial[,]'" however, is a term that "'clearly implies that such evidence must be of ponderable legal significance. Obviously the word cannot be deemed synonymous with "any" evidence. It must be reasonable in nature, credible, and of solid value; it must actually be "substantial" proof of the essentials which the law requires in a particular case.'" (*People v. Bassett* (1968) 69 Cal.2d 122, 138-139, quoting *Estate of Teed* (1952) 112 Cal.App.2d 638, 644.)

I.

There is Insufficient Evidence Jenkins Made a "Credible Threat of Violence"

A "'[c]redible threat of violence'" under section 527.8 is "a knowing and willful statement or course of conduct that would place a reasonable person in fear for his or her safety, or the safety of his or her immediate family, and that serves no legitimate purpose." (§ 527.8, subd. (b)(2).) A threat may be conveyed by speech or conduct. (*Garbett, supra,* 190 Cal.App.4th at p. 539.) The factual context is important when "deciding whether the test for a credible threat ha[s] been met[.]" (*Id.* at p. 541; see also *Huntingdon Life Sciences, Inc. v. Stop Huntingdon Animal Cruelty USA, Inc.* (2005) 129 Cal.App.4th 1228, 1250 (*Huntingdon*) ["'[c]ontext is everything in threat jurisprudence'"].)

Courts have held an express or implied threat to kill constitutes a credible threat of violence under section 527.8. (See *USS-Posco Industries v. Edwards* (2003) 111 Cal.App.4th 436, 444, fn. omitted [sufficient evidence of a credible threat of violence where the defendant "repeatedly threatened to bring a gun into the workplace and shoot UPI employees against whom he harbored a grudge" and "spoke of carrying a gun in his car"]; *Kaiser, supra,* 201 Cal.App.4th at p. 553 [defendant threatened to "'flip his lid' and 'do something that he would regret[,]'" and to "'kill someone'"]; *Huntingdon, supra,* 129 Cal.App.4th at p. 1241, fn. omitted [entries on animal rights website advising lab employee she had "'already been hit by the ALF'" and that "'thousands of activists'" knew where she lived constituted credible threat of violence]; *City of Palo Alto v. Service Employees Internat. Union* (1999) 77 Cal.App.4th 327, 330 [section 527.8 restraining order proper where employee threatened to shoot a coworker and his family members]; *In re M.B.* (2011) 201 Cal.App.4th 1057, 1066 [the mother threatened to kill social workers and their children and "'lunged'" at the social worker; the mother's behavior was clearly "'escalating toward the potential for physical violence'"].)

Garbett is instructive. There, a city resident was "angry and resentful" for having "encountered obstacles in his attempts to run" for city council and became "'agitated'" during a conversation with a deputy city clerk. (*Garbett, supra,* 190 Cal.App.4th at pp. 529, 531.) "'[V]ery stiff, very rigid,'" the resident raised his voice and spoke in an "'arrogant, condescending way.' He was 'clearly upset.' . . . At one point [he] said, 'What does somebody have to do to change policy around here? Do you have to be—take matters into your own hands like the Black man in Missouri'" who had shot several people at city hall. (*Id.* at p. 531.) The clerk felt threatened. The appellate court rejected the resident's claim that his comments were "'rhetorical'" and not intended "'to be taken as a threat'" (*id.* at p. 538) and concluded the comments constituted a credible threat of violence under section 527.8. (*Garbett, supra,* at p. 541.)

Unlike *Garbett* and the cases above, there is no evidence Jenkins threatened to shoot or harm Romero or Capuro, nor any evidence he made threatening movements toward the two women. In fact, there was no evidence at all regarding what Jenkins said

to Romero and Capuro nor Jenkins's proximity to the women, his relative size or physique, or the size of the office. In their declarations, Romero and Capuro averred Jenkins was "extremely angry, threatening, rude and frightening" when he came to the office on May 28, 2014 and "rude, loud, and frightening" and "loud, abusive, cursing, and volatile" during other office visits. At the hearing, Romero testified Jenkins was "angry" and "loud" and "demand[ed] to speak" with the property manager. She also testified Chandler pushed the office door, but did not describe how hard he pushed the door, or how close she was to the door. Carolyn testified Jenkins screamed and used "horrible" and "very bad language," and that he "terrorized" Chandler employees and other building residents. Jenkins may have been angry and frustrated, but these conclusory and generalized statements — without more — do not constitute substantial evidence of a credible threat of violence under section 527.8.

In two sentences, Chandler contends there is substantial evidence supporting the restraining order because Jenkins conceded "Romero and Capuro were afraid of him." Chandler also argues Jenkins's concession that "he considers violence a form of social interaction" constitutes substantial evidence of a credible threat of violence. We reject these arguments because they are unsupported by reasoned argument or authority. (*In re Marriage of Falcone & Fyke* (2008) 164 Cal.App.4th 814, 830 [treating contentions not supported by "cogent legal argument or citation to authority" as waived].) Moreover, Chandler has taken Jenkins's statement out of context. The point Jenkins was trying to make in his initial response to the request for a restraining order was not that he considered violence an acceptable form of social interaction but that he didn't "want to get involved with Yumi Romero or Jenni Capuro . . . in any kind of entanglement . . . [he] just wanted to see the property manager. . . ."

II.

Jenkins Had a Legitimate Purpose for Visiting the Office

As we have stated, a "'[c]redible threat of violence'" under section 527.8 is a "statement or course of conduct . . . that *serves no legitimate purpose*." (§ 527.8, subd. (b)(2), italics added.) Here, the court erred by issuing the restraining order because

Jenkins had a legitimate purpose for visiting the office: to have Chandler — the company he paid to manage his building — resolve his noise complaint. *Byers v. Cathcart* (1997) 57 Cal.App.4th 805 (*Byers*) supports our conclusion. In that case, the plaintiff had an easement to use the defendants' driveway to access her home and she sometimes parked along the side of the driveway. (*Id.* at p. 808.) The trial court issued a restraining order pursuant to section 527.6 preventing the plaintiff from parking in the driveway.[5] (*Byers, supra,* at pp. 808-809.)

The appellate court reversed, concluding there was "no evidence that the car parking was 'harassment.'" (*Byers, supra,* 57 Cal.App.4th at p. 812.) As the *Byers* court explained, "[t]here was no evidence in this case that plaintiff parked her car on the driveway easement (or allowed her guests and visitors to park there) for any purpose other than for the same purpose possessed by every driver who parks a car—she has to leave her car somewhere when she is not using it. There was no evidence, for example, that plaintiff . . . spitefully chose to park on the driveway easement simply to annoy defendants. . . . There was no evidence to support the necessary finding that plaintiff's parking served 'no legitimate purpose.' [Citation.] Legitimacy of purpose negates harassment. Since the general act of parking a car serves a legitimate need, and since there was no evidence in the record to support a conclusion that plaintiff was parking on the driveway easement for a purpose other than to meet this legitimate need, there is no support in the record for the necessary conclusion that the car parking constituted harassment." (*Ibid.*)

Here as in *Byers*, there is no evidence supporting a finding that Jenkins's conduct served no legitimate purpose as required by section 527.8. For example, there is no evidence Jenkins "spitefully chose" to visit the office "simply to annoy" or frighten Chandler employees. (*Byers, supra,* 57 Cal.App.4th at p. 812.) To the contrary, Jenkins

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[5] Section 527.6 prohibits harassment, defined in part as conduct "which serves no legitimate purpose." (§ 527.6, subd. (b)(2).) Sections 527.6 and 527.8 are "parallel" and courts have relied on section 527.6 when interpreting section 527.8. (See, e.g., *Scripps Health, supra,* 72 Cal.App.4th at pp. 333-334.)

established he visited the office — which was open to the public — to seek the property manager's help resolving a noise problem in a building Chandler managed for Jenkins and other condominium owners. When Jenkins visited the office, the property manager was sympathetic and promised to "follow up[;]" the property manger did not tell Jenkins he should not come to the office. On prior occasions, Jenkins had called and written the office, but Chandler did not respond. Jenkins therefore had a legitimate need to visit the office: to have Chandler, the company he paid to manage his condominium building, help him resolve a noise problem in his building. Chandler's one-paragraph response does not alter our conclusion.

We conclude the workplace violence restraining order issued pursuant to section 527.8 must be reversed because there is insufficient evidence Jenkins made a credible threat of violence and because Jenkins had a legitimate need for visiting the office. Having reached this result, we need not address Jenkins's argument there is insufficient evidence of a reasonable probability of future harm. (See *Scripps Health, supra,* 72 Cal.App.4th at p. 331 [to obtain permanent workplace violence restraining order under section 527.8, subdivision (f), the plaintiff must "establish great or irreparable harm would result to an employee without issuance of the prohibitory injunction *because of the reasonable probability the wrongful acts will be repeated in the future*," italics added].)

DISPOSITION

The workplace violence restraining order (form WV-130) issued on August 8, 2014 is reversed. Jenkins shall recover costs on appeal. (Cal. Rules of Court, rule 8.278(a)(2).)

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Jones, P.J.

We concur:

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Simons, J.

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Needham, J.